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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. ID-2003 63415

NADIA MARIE KALOUSEK-TEMPLE
1623 Via Fortuna
San Jose, CA 95120

A C C U S A T I O N

Physical Therapist License No. PT 19825

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about April 18, 1994, the Physical Therapy Board of California issued Physical Therapist License Number PT 19825 to NADIA MARIE KALOUSEK-TEMPLE ("Respondent" or "Kalousek-Temple"). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2630 of the Code states:

“It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

“Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500). A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide , excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as,

1 and in proximity to, the location where the aide is performing patient-related tasks, and
2 shall be readily available at all times to provide advice or instruction to the aide. When
3 patient-related tasks are provided to a patient by an aide, the supervising physical
4 therapist shall, at some point during the treatment day, provide direct service to the
5 patient as treatment for the patient's condition, or to further evaluate and monitor the
6 patient's progress, and shall correspondingly document the patient's record.

7 “The administration of massage, external baths, or normal exercise not a part of a
8 physical therapy treatment shall not be prohibited by this section”.

9 6. Section 2660 of the Code states:

10 “The board may, after the conduct of appropriate proceedings under the
11 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
12 impose probationary conditions upon, or issue subject to terms and conditions any
13 license, certificate, or approval issued under this chapter for any of the following causes:

14 . . .

15 (h) Gross negligence in his or her practice as a physical therapist or
16 physical therapy assistant.

17 (i) . . . violating, or attempting to violate, directly or indirectly, or
18 assisting in or abetting the violating of, or conspiring to violate any provision or
19 term of this chapter or of the State Medical Practice Act.

20 (j) The aiding or abetting of any person to violate this chapter or any
21 regulations duly adopted under this chapter.

22 (k) The aiding or abetting of any person to engage in the unlawful practice
23 of physical therapy.

24 (l) The commission of any fraudulent, dishonest, or corrupt act which is
25 substantially related to the qualifications, functions, or duties of a physical
26 therapist or physical therapy assistant.

27 7. Section 2655 of the Code states:

28 “As used in this article:

1 (a) "Physical therapist" means a physical therapist licensed by the board.

2 (b) "Physical therapist assistant" means a person who meets the
3 qualifications stated in Section 2655.3 and who is approved by the board to assist
4 in the provision of physical therapy under the supervision of a physical therapist
5 who shall be responsible for the extent, kind, and quality of the services provided
6 by the physical therapist assistant.

7 (c) "Physical therapist assistant" and "physical therapy assistant" shall be
8 deemed identical and interchangeable.

9 8. Section 2655.2 of the Code states:

10 "A physical therapist shall not supervise more physical therapist assistants
11 at any one time than in the opinion of the board can be adequately supervised.
12 Two physical therapist assistants shall be the maximum number of physical
13 therapist assistants supervised by a physical therapist at any one time, but the
14 board may permit the supervision of a greater number by a physical therapist if, in
15 the opinion of the board, there would be adequate supervision and the public's
16 health and safety would be served. In no case, however, shall the total number of
17 physical therapist assistants exceed twice the number of physical therapists
18 regularly employed by a facility at any one time."

19 9. Section 2655.7 of the Code states:

20 "Notwithstanding Section 2630, a physical therapist assistant may assist in
21 the provision of physical therapy service provided the assistance is rendered under
22 the supervision of a physical therapist licensed by the board."

23 10. Section 2655.92 of the Code states:

24 "The board may adopt regulations as reasonably necessary to carry out the
25 purposes of this article. The board shall adopt a regulation formulating a
26 definition of the term "adequate supervision" as used in this article."

27 11. Section 1398.44 of Title 16 of the California Code of Regulations states:

28 "1398.44. Adequate Supervision Defined.

1 “A licensed physical therapist shall at all times be responsible for all physical
2 therapy services provided by the physical therapist assistant. The supervising
3 physical therapist has continuing responsibility to follow the progress of each
4 patient, provide direct care to the patient and to assure that the physical therapist
5 assistant does not function autonomously. Adequate supervision shall include all
6 of the following:

7 (a) The supervising physical therapist shall be readily available in person
8 or by telecommunication to the physical therapist assistant at all times while the
9 physical therapist assistant is treating patients. The supervising physical therapist
10 shall provide periodic on site supervision and observation of the assigned patient
11 care rendered by the physical therapist assistant.

12 (b) The supervising physical therapist shall initially evaluate each patient
13 and document in the patient record, along with his or her signature, the evaluation
14 and when the patient is to be reevaluated.

15 (c) The supervising physical therapist shall formulate and document in
16 each patient's record, along with his or her signature, the treatment program goals
17 and plan based upon the evaluation and any other information available to the
18 supervising physical therapist. This information shall be communicated verbally,
19 or in writing by the supervising physical therapist to the physical therapist
20 assistant prior to initiation of treatment by the physical therapist assistant. The
21 supervising physical therapist shall determine which elements of the treatment
22 plan may be assigned to the physical therapist assistant. Assignment of these
23 responsibilities must be commensurate with the qualifications, including
24 experience, education and training, of the physical therapist assistant.

25 (d) The supervising physical therapist shall reevaluate the patient as
26 previously determined, or more often if necessary, and modify the treatment, goals
27 and plan as needed. The reevaluation shall include treatment to the patient by the
28 supervising physical therapist. The reevaluation shall be documented and signed

1 by the supervising physical therapist in the patient's record and shall reflect the
2 patient's progress toward the treatment goals and when the next reevaluation shall
3 be performed.

4 (e) The physical therapist assistant shall document each treatment in the
5 patient record, along with his or her signature. The physical therapist assistant
6 shall document in the patient record and notify the supervising physical therapist
7 of any change in the patient's condition not consistent with planned progress or
8 treatment goals. The change in condition necessitates a reevaluation by a
9 supervising physical therapist before further treatment by the physical therapist
10 assistant.

11 (f) Within seven (7) days of the care being provided by the physical
12 therapist assistant, the supervising physical therapist shall review, cosign and date
13 all documentation by the physical therapist assistant or conduct a weekly case
14 conference and document it in the patient record. Cosigning by the supervising
15 physical therapist indicates that the supervising physical therapist has read the
16 documentation, and unless the supervising physical therapist indicates otherwise,
17 he or she is in agreement with the contents of the documentation.

18 (g) There shall be a regularly scheduled and documented case conference
19 between the supervising physical therapist and physical therapist assistant
20 regarding the patient. The frequency of the conferences is to be determined by the
21 supervising physical therapist based on the needs of the patient, the supervisory
22 needs of the physical therapist assistant and shall be at least every thirty calendar
23 days.

24 (h) The supervising physical therapist shall establish a discharge plan. At
25 the time of discharge, or within 7 (seven) days thereafter, a supervising physical
26 therapist shall document in the patient's record, along with his or her signature, the
27 patient's response to treatment in the form of a reevaluation or discharge
28 summary.”

12. Section 1399 of Title 16 of the California Code of Regulations states:

1399. Requirements for Use of Aides.

“A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing non-patient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient related tasks as defined below.

(2) A "non-patient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.

(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and

1 in immediate proximity to the location where the aide is performing patient
2 related tasks, and shall be readily available at all times to provide advice or
3 instruction to the aide. When patient related tasks are provided a patient by an aide
4 the supervising physical therapist shall at some point during the treatment day
5 provide direct service to the patient as treatment for the patient's condition or to
6 further evaluate and monitor the patient's progress, and so document in the
7 patient's record.

8 (5) The physical therapist shall perform periodic re-evaluation of
9 the patient as necessary and make adjustments in the patient's treatment program.
10 The re-evaluation shall be documented in the patient's record.

11 (6) The supervising physical therapist shall countersign with their
12 first initial and last name, and date all entries in the patient's record, on the same
13 day as patient related tasks were provided by the aide.

14 13. Section 2661.5 (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the
16 board, the board may request the administrative law judge to direct any licensee
17 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
18 actual and reasonable costs of the investigation and prosecution of the case".

19 EVENTS, ACTS OR OMISSIONS

20 14. On or about April 21, 2003, the Physical Therapy Board of California
21 received a complaint from John Nativo, Physical Therapy Advisor, Blue Shield of California,
22 alleging that documentation submitted by Washington Outpatient Rehabilitation Center to Blue
23 Shield of California, which included billing for physical therapy services provided by a Physical
24 Therapy Assistant ("PTA"), lacked the co-signature of Nadia Kalousek-Temple, Physical
25 Therapist ("PT"), as required by her role as the supervisor of the PTA for the patient whose
26 records were in question. The Division of Investigation ("DOF") thereafter conducted an
27 investigation on behalf of the Board.

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1 15. Nativo identified “Patient B”¹ as a patient whose first date of service was
2 10/30/01. Kalousek-Temple was identified as the supervising physical therapist. A review of the
3 record revealed a number of entries between 11/07/01 and 01/09/02, signed by “James”, none of
4 which were co-signed by Kalousek-Temple, Supervising PT.

5 16. As part of the investigation, DOI investigators interviewed Nelson Mant
6 Tumanda, PTA 6004, who indicated as follows:

7 A. Tumanda identified himself as the “James” who signed as the PTA
8 who provided service in the records of Patient B. Tumanda described his duties as assisting PTs
9 with patient treatment plans. Tumanda reviewed a copy of Patient B’s record, and confirmed his
10 signature(s) on the record. Tumanda confirmed that Kalousek-Temple was the Supervising PT
11 assigned to this patient. Tumanda stated that he believed the standard of practice was to have a
12 PT first see and evaluate the patient. Tumanda said the patients assigned to him were and are,
13 routinely seen first and evaluated by a PT who develops their plan of care. If there was no
14 significant therapy or supervision required, the patient was transferred to Tumanda who carried
15 out the PT’s plan of care. Patient B had no significant therapy so Patient B was assigned to
16 Tumanda and Kalousek-Temple was the PT Supervisor. Tumanda then met with Kalousek-
17 Temple every two or three weeks to review the patient’s progress.

18 B. Tumanda stated that his patients are listed under his name in the
19 appointment schedule. Although his schedule varied, he carried a caseload of about twenty
20 patients a day and often worked a 10 hours day. Tumanda stated that the ideal schedule is two
21 patients every half-hour; however, his schedule was half that because he worked alone. Tumanda
22 said a PT was usually in the clinic during business hours; however, he admitted there were days
23 when no PT was present, for instance, when a PT called in sick.

24 17. Patient B’s records indicate as follows:

25 A. Spine evaluation dated 10/30/01, conducted by Kalousek-Temple,
26

27
28 1. Names of patients were redacted from the physical therapy records and replaced with a
letter or number as an identifier.

1 citing Assessments/Goals, Plan and prescription;

2 B. Upper extremity Evaluation Form;

3 C. Physical Therapy Progress Report dated 01/24/02, signed by
4 Kalousek-Temple;

5 D. Physical Therapy Progress Report dated 04/04/02, signed by
6 Kalousek-Temple;

7 E. Flow Chart Treatment Notes from 10/30/01 through 04/04/02,
8 signed variously by Kalousek-Temple or Tumanda without Kalousek-Temple's co-signature:

9 18. The following reflect treatment dates on which Tumanda charted service
10 on the Flow Chart Treatment Notes without having a co-signature from his supervising PT,
11 Kalousek-Temple:

12 A. 11/06/01, signed by Tumanda with no co-signature by Kalousek-
13 Temple;

14 B. 11/07/01, signed by Tumanda with no co-signature by Kalousek-
15 Temple;

16 C. 11/16/01, signed by Tumanda with no co-signature by Kalousek-
17 Temple;

18 D. 11/20/01, signed by Tumanda with no co-signature by Kalousek-
19 Temple;

20 E. 11/21/01, signed by Tumanda with no co-signature by Kalousek-
21 Temple;

22 F. 11/30/01, signed by Tumanda with no co-signature by Kalousek-
23 Temple;

24 G. 12/03/01, signed by Tumanda with no co-signature by Kalousek-
25 Temple;

26 H. 12/10/01, signed by Tumanda with no co-signature by Kalousek-
27 Temple;

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1 I. 01/09/02, signed by Tumanda with no co-signature by Kalousek-
2 Temple.

3 19. As part of the investigation, DOI investigators interviewed respondent
4 Kalousek-Temple, who indicated as follows:

5 A. Kalousek-Temple stated she left employment at Washington
6 Outpatient Rehabilitation Center (“WORC”) in about April 2002. At WORC, Kalousek-Temple
7 received assignments as a PT through referral from the clinic’s front desk. The receptionist
8 would schedule new patients’ appointments according the patients’ needs. The appointment
9 would be made with whichever PT was available at that time. Typically, there was no personal
10 referral, that is, patients did not usually ask for any particular PT when making their first
11 appointment. Kalousek-Temple stated that when a new patient was seen at WORC, the PT
12 assigned evaluated the patient. The evaluation included a history and physical examination of
13 functions, i.e., movement, strength, balance, as well as establishing goals and a pan of treatment.

14 B. Kalousek-Temple stated that she recalled Patient B. Kalousek-
15 Temple stated that she and Amy Knight were the only PTs employed at WORC when Patient B
16 received treatment here. “James” was the only PTA employed at the time. Kalousek-Temple did
17 not recall “James” true name. (As noted, *supra*, “James” was identified as Nelson Mant
18 Tumanda, PTA.) Kalousek-Temple stated that Patient B received treatment three times and she
19 worked two of those three days so after she established Patient B’s treatment plan, she was the
20 PT that implemented it. Kalousek-Temple stated that Patient B was largely on an exercise plan
21 that “James” could follow. Kalousek-Temple stated that she communicated with “James”
22 “through the chart”. That is, if Patient B responded well to the exercises/treatment with
23 Kalousek-Temple, “James” would follow what was done by Kalousek-Temple the day before.
24 She stated she did not specifically meet with “James” about Patient B. They did not do rounds
25 nor did they have meetings specifically to discuss patients. On the days when Kalousek-Temple
26 was not present, Knight was in the facility to supervise patient care. Patient B followed the
27 expected progress and the plans and goals did not change. If Patient B tolerated increased
28 exercises well with Kalousek-Temple, then “James” would read the chart to follow the increased

1 exercises from the patient's previous visit. Kalousek-Temple left employment shortly after
2 Patient B's treatment was completed at WORC.

3 C. Kalousek-Temple stated she reviewed James' notes the next time
4 she was in because she wanted to know how the patient reacted to the patient's previous visit.
5 Kalousek-Temple stated she had no recollection of ever signing or being asked to sign off on the
6 PTA's charting. Kalousek-Temple was asked by the DOI Investigator to define "supervision."
7 Kalousek-Temple stated that supervision was a sketchy thing at WORC. Kalousek-Temple
8 stated that the PT decided what was appropriate for PTA care and at that point if the PT was not
9 available, the receptionist would schedule the patient's appointment(s) with the PTA. Kalousek-
10 Temple stated that if "James" had issues or concerns about patient care, he would talk to her or
11 Knight about them. Kalousek-Temple was asked by the DOI Investigator if Patient B was
12 under her or "James'" care. Kalousek-Temple stated Patient B was under her care and was only
13 seen by James on the third day of the week when she did not work. Kalousek-Temple stated she
14 did not know at that time that she was supposed to sign off on James' charting. Kalousek-
15 Temple stated that she currently works at "Rehab Outcome", an ambulatory orthopedic treatment
16 outpatient clinic, in San Jose where she signs off on a PTA's charting when a PTA is employed
17 there.

18 D. Kalousek-Temple stated that scheduling was completed between
19 the patient and the receptionist. Kalousek-Temple did not know until the patient arrived for the
20 next visit whether the patient was on her's or James' schedule. Kalousek-Temple stated that
21 James probably treated Patient B when Kalousek-Temple was not scheduled to work. Kalousek-
22 Temple stated that Patient B was an appropriate referral to a PTA for treatment.

23 CAUSES FOR DISCIPLINARY ACTION

24 20. Respondent is subject to disciplinary action based upon the events, acts, or
25 omissions, set forth hereinabove, pursuant to Business and Professions Code sections: 2660 (i);
26 and/or 2660 (j); and/or 2660 (k); and/or for violating or attempting to violate, or assisting in or
27 abetting the violating of, or aiding or abetting or conspiring to violate, section 2630 of the Code
28 and/or section 1399 of Title 16 of the California Code of Regulations; and/or for violating or

attempting to violate, or assisting in or abetting the violating of, or aiding or abetting or conspiring to violate section 1398.44 of Title 16 of the California Code of Regulations, including subdivision (a), and/or (b), and/or (c), and/or (d), and/or (f), and/or (g), in that:

A. As the supervising licensed physical therapist, respondent did not properly supervise all physical therapy services provided by the physical therapist assistant; and/or failed to assure that the physical therapist assistant did not function autonomously [section 1398.44 of Title 16 of the California Code of Regulations]; and/or

B. As the supervising physical therapist, respondent was not readily available in person or by telecommunication to the physical therapist assistant at all times while the physical therapist assistant was treating patients; and/or as the supervising physical therapist, respondent did provide periodic on site supervision and observation of the assigned patient care rendered by the physical therapist assistant [section 1398.44 (a) of Title 16 of the California Code of Regulations]; and/or

C. Respondent failed to document in the patient record, along with her signature, the evaluation and when the patient was to be reevaluated [section 1398.44 (b) of Title 16 of the California Code of Regulations]; and/or

D. Respondent, as the supervising physical therapist, failed to communicate verbally, or in writing , to the physical therapist assistant, prior to initiation of treatment by the physical therapist assistant; and/or respondent, as the supervising physical therapist, failed to determine which elements of the treatment plan could be assigned to the physical therapist assistant, commensurate with the qualifications, including experience, education and training, of the physical therapist assistant [section 1398.44 (c) of Title 16 of the California Code of Regulations]; and/or

E. Respondent, as a supervising physical therapist, allowed the physical therapist assistant to performed Physical Therapy Progress Evaluations (and Reports), which can only be performed by a physical therapist [section 1398.44 (d) of Title 16 of the California Code of Regulations]; and/or

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1 F. Respondent, as the supervising physical therapist, failed to, within
2 seven (7) days of the care being provided by the physical therapist assistant, review, cosign and
3 date all documentation by the physical therapist assistant; and/or conduct a weekly case
4 conference and document it in the patient record [section 1398.44 (f) of Title 16 of the California
5 Code of Regulations]; and/or

6 G. Respondent, as the supervising physical therapist, failed to conduct
7 a regularly scheduled and documented case conference between the supervising physical therapist
8 and physical therapist assistant regarding the patient [section 1398.44 (g) of Title 16 of the
9 California Code of Regulations]; and/or

10 H. Respondent, as the supervising physical therapist, allowed the
11 physical therapist assistant to essentially practice independently and autonomously in the clinic
12 with his own schedule and without the required co-signatures or documented patient conferences
13 with respondent [section 2630 of the Code].

14 PRAYER

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

17 1. Revoking or suspending Physical Therapist License Number PT 19825,
18 issued to NADIA MARIE KALOUSEK-TEMPLE;

19 2. Ordering NADIA MARIE KALOUSEK-TEMPLE to pay the Physical
20 Therapy Board of California the reasonable costs of the investigation and enforcement of this
21 case, pursuant to Business and Professions Code section 2661.5;

22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: January 13, 2006

24
25 Original Signed By:
26 STEVEN K. HARTZELL
27 Executive Officer
28 Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant